

BILLING CODE: 3410-34-P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 330

9 CFR Part 94

[Docket No. 05-002-4]

Interstate Movement of Garbage from Hawaii; Municipal Solid Waste

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations pertaining to certain garbage to provide for the interstate movement of garbage from Hawaii subject to measures designed to protect against the dissemination of plant pests into noninfested areas of the continental United States. We are amending these regulations upon request in order to provide the State of Hawaii with additional waste disposal options, and after determining that the action is highly unlikely to result in the introduction and dissemination of plant or animal pests or diseases into the continental United States from Hawaii. We are also making other amendments to the garbage regulations to clarify their intent and make them easier to understand.

EFFECTIVE DATE: [Insert date 30 days after date of publication in the Federal Register].

FOR FURTHER INFORMATION CONTACT: Ms. Shannon Hamm, Assistant Deputy Administrator, Policy and Program Development, APHIS, 4700 River Road Unit 20, Riverdale, MD 20737-1231; (301) 734-4957.

SUPPLEMENTARY INFORMATION:

Background

Under 7 CFR 330.400 and 9 CFR 94.5 (referred to elsewhere in this document as the regulations), the Animal and Plant Health Inspection Service (APHIS) regulates the importation and interstate movement of garbage that may pose a risk of introducing or disseminating animal or plant pests or diseases that are new to or not widely distributed within the United States. Not all movements of waste material are regulated by APHIS;¹ only movements of waste that meets APHIS's definition of "garbage" are regulated, and even then, only under certain circumstances. Under the regulations, the term "garbage" is defined as "all waste material derived in whole or in part from fruits, vegetables, meats, or other plant or animal (including poultry) material, and other refuse of any character whatsoever that has been associated with any such material on board any means of conveyance, and including food scraps, table refuse, galley refuse, food wrappers or packaging materials, and other waste material from stores, food preparation areas, passengers' or crews' quarters, dining rooms, or any other areas on means of conveyance." Garbage also means "meals and other food that were available for consumption by passengers and crew on an aircraft but were not consumed."

1 ? The operation of landfills and incinerators and the intrastate and interstate movement of garbage are regulated predominantly by State and local governments. The U.S. Environmental Protection Agency (EPA) regulates the interstate movement of hazardous wastes. See EPA's Web site for additional information: <http://www.epa.gov/epaoswer/osw/index.htm>.

Waste material that meets the definition of garbage is regulated by APHIS if it is removed from a means of conveyance that:

\$ Within the last 2 years, has been in any port outside the United States or Canada; or

\$ Within the last year, has moved from Hawaii or a U.S. territory to another U.S. State.²

However, garbage onboard a conveyance that meets one of the two conditions above may be exempted from regulation if the conveyance is cleared of all regulated garbage, and after cleaning and disinfection, an inspector certifies that the conveyance contains no garbage that poses a risk of pest introduction into the United States. Garbage from Canada is also exempted from regulation.

The regulations were established to address the risk posed by garbage that originates on or is onboard conveyances that have been located in areas where exotic animal or plant pests or diseases are present. Such garbage includes waste generated during the course of commercial and private air travel and commercial or private transit of goods or persons by sea. The regulations were not intended to address risks posed by movements of municipal solid waste (MSW).

Due to a limited availability of landfill space in Hawaii, business interests and public officials are exploring other options for disposal of the State's waste. These persons have requested that APHIS allow the interstate movement of MSW from Hawaii. We believe the regulations require amendment to provide for the movement of garbage generated in Hawaii.

2 [?] "State" is defined as any of the 50 States and any U.S. territory or possession.

Pest Risk Assessment

As part of our evaluation of the request by business interests and public officials in Hawaii, we prepared a draft pest risk assessment (PRA), titled “The Risk of Introduction of Pests to the Continental United States via Plastic-Baled Municipal Solid Waste from Hawaii ” (March 2006) to evaluate the interstate movement of garbage from Hawaii to the mainland of the United States. The objective of the PRA was to evaluate whether a baling technology that would bundle, wrap, and seal the MSW into airtight bales will effectively mitigate potential plant pest risks associated with MSW from Hawaii. The PRA focused on the planned use of the baling technology because airtight enclosure from creation to burial will mitigate the risks of establishment by any plant pests. The PRA addressed the following three issues:

- \$ The ability of the baling technology to provide a strong, airtight barrier;
- \$ The examination of the occurrence of ruptures or punctures; and
- \$ The examination of general pathway procedures to reduce pest incidence in the bales and the chances of escape in the event of accidental ruptures or punctures.

In addition, the PRA provides qualitative risk ratings for different pest types based on the likelihood of introduction. Only those pathway processes likely to be common to all company proposals to transport baled Hawaiian waste were considered. We will prepare separate assessments for other company proposals which will address factors such as the destination landfill, type of transportation to be used on the mainland, and pest species that may pose particular threats.

The PRA concluded that transporting MSW from Hawaii to the continental United States in airtight bales poses a low risk of pest introduction and dissemination because the baling technology mitigates the risk from all types of plant pests. In addition, the other pathway procedures should adequately protect against accidental ruptures or punctures in bales during the handling and transport process. Pest mitigation processes such as the baling technology itself or features of the proposed pathway, including the waste type, and how bales are staged, handled, transported, and buried, are added safeguards that we conclude will prevent the introduction and dissemination of exotic pests. As a complement to the baling technology, the PRA recommends proper staging of bales and certification that they are mollusk-free to mitigate against contaminating pests. As long as those processes and the procedures proposed by the companies (including diversion of yard and agricultural waste, prompt shipment, monitoring and inspection of bales, and thorough cleanup of any ruptures that do occur) are followed, establishment of Hawaiian plant pests via this pathway is highly unlikely.

On April 19, 2006, we published in the Federal Register (71 FR 20030-20041, Docket No. 05-002-2) a proposal³ to amend the regulations in “Subpart–Garbage” (7 CFR 330.100 through 330.400) and 9 CFR 94.5 pertaining to certain garbage to provide for the interstate movement of garbage from Hawaii subject to measures designed to protect against the dissemination of plant pests into noninfested areas of the continental United States.

³ To view the proposed rule and the comments we received, go to <http://www.regulations.gov>, click on the "Advanced Search" tab, and select "Docket Search." In the Docket ID field, enter APHIS-2005-0047, then click on "Submit." Clicking on the Docket ID link in the search results page will produce a list of all documents in the docket.

We solicited comments on the proposed rule for 30 days ending on May 19, 2006. We received five comments by that date, including a request to extend the comment period. In a document published in the Federal Register on May 31, 2006 (Docket No. APHIS-2005-0047, 71 FR 30834), we reopened and extended the deadline for comments until June 5, 2006. We received an additional seven comments by that date. The comments came from several municipalities in Hawaii, waste companies, congressional representatives, the State of California, a tribal representative, and members of the general public. Of the 12 comments, 8 fully supported the proposal. The remaining commenters raised several issues, which are discussed below.

Bale Technology

Comment: APHIS must test the bale technology to ensure that the plastic bales will not breach. In addition, APHIS should use its own experts to validate the research data provided by the technology vendors and their consultants regarding the safety of bale technology.

Response: As cited in the PRA, independent researchers have tested the baling technology in a variety of situations and firmly established its utility and effectiveness at creating airtight bales of MSW. Because these studies have been peer reviewed, APHIS believes that it is not necessary to repeat the testing performed in the underlying research.

Pest Risk Assessment

Comment: APHIS should revisit its PRA to clarify the roles played by compaction and shredding because whole fruit containing fruit fly or other insect eggs or larvae will not be affected by the anoxic conditions of the bales.

Response: While insect eggs and larvae, including those of fruit flies and other agricultural pests, could theoretically survive in whole fruit under short-term anoxic conditions, whole fruit would not be present in the bales due to the processing, i.e., pulverizing or shredding followed by compaction, of the MSW prior to being baled. As described in the PRA, bale densities are expected to be in excess of 800 kg/m³, so compaction will likely kill most insects, including fruit flies, regardless of stage, and may also neutralize some weed seeds and nematodes. Moreover, bales that remain airtight from creation until burial completely mitigate the risk from all plant pests because the pests and pest propagules cannot escape. That mitigation is universal, i.e., it does not depend on pest type or taxonomy, and probably applies equally to both current and future pests that establish in Hawaii.

Comment: How will APHIS ensure that noxious weeds would not be included in the bales of MSW?

Response: As we discussed in the PRA, the exclusion of most yard and agricultural waste from the baling process will greatly reduce the likelihood that seeds of regulated pest plants will be present in the baled MSW. In addition, very few regulated species are likely to have viable seeds in the bales, either because they mostly reproduce vegetatively, or because they are not found in yards and gardens in residential areas in Hawaii. Species of concern to particular mainland States will be further evaluated in site-specific PRAs to identify any exceptions and assess their potential risks.

Environmental Impacts

Comment: APHIS should research the consequences of any spill of baled MSW during transport.

Response: APHIS conducted several evaluations, including a PRA and an EA to determine the consequences of any spill involving bales containing MSW during transport from Hawaii to the mainland United States. We have determined that there is a very low likelihood that plant pests or noxious weeds would be introduced and disseminated into the mainland United States as a result of this action. As described in the PRA, there is a series of mitigations that would take place including limiting waste materials that would exist in the bales and ensuring proper staging, handling, transport, and burial of these bales. There will also be specific contingency plans for emergency response to potential spills outlined in compliance agreements with specific sites. In addition, short of a barge capsizing (which would be considered catastrophic events and would be cause to initiate emergency consultation), there is essentially no risk of impact on aquatic life from the transport of baled MSW from Hawaii to the mainland United States. Situations where there is potential for impacts occur wherever bales are moved from one staging area or mode of transportation to another. These transfer points include: The facility in Honolulu where bales are initially loaded onto the barges; the unloading facility on the mainland where bales are unloaded from the barges and loaded onto trucks; and the final destination where bales are unloaded from trucks and placed into the landfill. In some scenarios there could be intermediate steps requiring the handling of bales, e.g., an ocean-going barge may offload its bales onto smaller-sized barges to navigate a river; an ocean-going barge may offload its bales onto railcars; and railcars would then need to transfer their bales onto trucks for the final leg of the trip to the landfill.

At each of the bale transfer points identified above, there is a small potential for dropping a bale into the water or, more likely, compromising the integrity of one or more bales of MSW

which could result in spillage of the contents on the ground or into the water. In most cases the spilled MSW would be retrieved and the bale repackaged. If this were to happen over water, it would be more difficult to retrieve the spilled MSW, particularly if the integrity of the bale was breached. Any spill, in the event of a broken bale, would be handled in accordance with a spill cleanup plan, attached to each compliance agreement, that provides guidance on what detergents and disinfectants to use, how to safely use them, and how to avoid aquatic contamination.

Comment: Shipping MSW to the mainland from Hawaii should only be done if alternative disposal options are not available.

Response: Municipal jurisdictions within the State of Hawaii will be responsible for determining which disposal option to pursue. APHIS will be responsible for ensuring that if the disposal option includes the movement of MSW from Hawaii to the mainland United States, it occurs in accordance with conditions provided in our regulations and compliance agreements.

Comment: Sending barges with MSW through the Columbia and Snake Rivers would negatively impact the number of fish in the area.

Response: We do not believe that there will be a significant increase in barge traffic in this region due to this action. We will have the opportunity to quantify this assertion when we conduct a site specific PRA and EA for the Columbia River Basin. In addition, APHIS does not regulate barge traffic. Under our authority we ensure that safeguards are in place to prevent the introduction and dissemination of plant pests, noxious weeds, and animal diseases.

APHIS did conduct a biological assessment for this action to determine impacts on listed species of fish and wildlife. We found that there are two types of risks that must be considered in such a situation. One is a physical disruption of the environment caused by the broken bales

and the physical retrieval of their strewn contents. Compromised bales or spilled MSW that is on land can be retrieved relatively easily. MSW that is spilled into waterways will be more difficult to retrieve, and some may not be retrievable, resulting in an incremental degradation of the natural aquatic environment. Since hazardous wastes are not permitted, any negative impacts will be restricted to physical ones and no chemical pollution is likely to result from the MSW itself.

The second type of risk that could result from breaking bales and the spilling of MSW could be from detergents and disinfectants that may be used during a cleanup of any spilled MSW that may occur on land. Detergents and disinfectants would not be effective in aquatic situations, and therefore, would not be used if spills were in or over water. If such tools were used during a cleanup effort, care must be taken to prevent them from entering waterways. Their use would be in accordance with a spill cleanup plan, attached to each compliance agreement, that provides guidance on what detergents and disinfectants to use, how to safely use them, and how to avoid aquatic contamination.

As mentioned above, APHIS will develop a site-specific pest risk assessment and environmental assessment which will examine any risks associated with transporting MSW into specific regions. The public will have an opportunity to comment on those documents before they are finalized.

Comment: Has APHIS conducted any studies on the potential to introduce new plant and animal pathogens to the Columbia Basin Region?

Response: This final rule provides a general framework which will allow for the interstate movement of MSW from Hawaii under certain conditions. One condition of that

movement will be that shipments will be moved under provisions outlined in a compliance agreement. A compliance agreement will be developed for each individual site on the mainland of the United States into which these shipments would be moved. For each compliance agreement, APHIS will develop a site-specific pest risk assessment and environmental assessment to examine the risks associated with transporting MSW into the specific region, including into the Columbia Basin region.

Requested Change to the Regulations

Comment: APHIS should add the staging requirement and certification of snail free shipments language found in the PRA to the regulatory text.

Response: The regulations state that garbage must be processed, packaged, safeguarded, and disposed of using a methodology that the Administrator has determined is adequate to prevent the introduction and dissemination of plant pests into noninfested areas of the United States. In addition, specific provisions will be outlined in individual compliance agreements for site-specific shipments. These provisions would be consistent with those in § 318.13-8, which pertain to inspection of articles and persons moved from Hawaii. We believe that the current provisions in the regulations, combined with site-specific compliance agreements, are sufficient to prevent the introduction and dissemination of snails and other hitchhikers.

Tribal Consultation

Comment: APHIS did not consult with Indian Tribes as directed under Executive Order (EO) 13175 and requested government-to-government consultation.

Response: We were petitioned to amend our regulations by the operators of several landfills located in the area of the Columbia River Basin who expressed an interest in receiving

MSW from Hawaii. Therefore, our initial contacts were limited to tribes located within that area. To comply with EO 13175, APHIS contacted the tribal chairs of each of the 13 tribes generally considered as Columbia River Basin Tribes (Burn Paiute Tribe, Coeur d'Alene Tribe, Colville Tribe, Kalispel Tribe, Kootenai Tribe, Nez Perce Tribe, Salish Kootenai Tribes, Shoshone Bannock Tribes, Shoshone Paiute Tribe, Spokane Tribe, Umatilla Indian Reservation, Warm Springs Reservation, and Yakama Indian Nation) in early November 2005. Each of these tribes has ties to the land and resources in and near the Columbia River and its drainage. APHIS believes that if there were any effects on tribes resulting from this rule, these are the tribes most likely to be affected. Each tribe was provided information on our proposed rule, environmental assessment, and pest risk analysis and offered an opportunity to request consultation.

At about the same time, APHIS contacted tribal organizations to determine which additional tribes may be affected and should be contacted. The tribal organizations contacted were the Affiliated Tribes of Northwest Indians (ATNI), the National Congress of American Indians, the National Tribal Environmental Council, and the Intertribal Agriculture Council. In addition, APHIS contacted the Columbia Basin Fish and Wildlife Authority.

In mid-February 2006, an Agency official provided a presentation about the proposed rule at the Winter Conference of the ATNI, and invited requests for tribal consultation. ATNI represents over 55 tribes in the Pacific Northwest. In early March 2006, the Agency sent reminders to tribal chairs stating that APHIS would consider requests for consultation until March 20, 2006. Although we received both oral and written comments from tribes and tribal members, we received no requests for consultation.

In mid-April 2006, upon publication of the proposed rule, copies of the proposed rule, environmental assessment, and pest risk analysis were mailed to the tribal chairs of each of the above-listed tribes and also to the listed tribal organizations. APHIS encouraged tribes and tribal organizations to submit comments. Based on our actions as described above, we believe that we have complied with EO 13175 for the purposes of this rulemaking. We will follow this final rule with risk and environmental assessments as well as compliance agreements with specific waste management sites located on the mainland of the United States that have expressed interest in receiving MSW from Hawaii. At the time that we make the site-specific assessments available to the public, we will also invite potentially affected tribal governments to engage in consultations with APHIS.

Change Regarding Agricultural and Yard Waste

In the proposed rule, the regulations in 7 CFR 330.402(a)(2) and 9 CFR 94.5(d)(1)(ii) provided that "The interstate movement of agricultural wastes and yard waste from Hawaii to the continental United States is prohibited." After further consideration, we have concluded that this provision, which implies a zero tolerance for agricultural or yard waste, is unrealistic. Despite the presence of yard waste recycling programs in Hawaii and the efforts of waste management companies to separate various types of waste, the presence of an incidental amount of agricultural or yard waste in baled MSW is, in practical terms, unavoidable. This situation was taken into account in the PRA, which recognized that there will likely be some minimal volume of agricultural and yard waste entering the pathway despite efforts to exclude that waste. Therefore, we have modified 7 CFR 330.402(a)(2) and 9 CFR 94.5(d)(1)(ii) in this final rule to read: "The interstate movement from Hawaii to the continental United States of agricultural

wastes and yard waste (other than incidental amounts (less than 3 percent) that may be present in municipal solid waste despite reasonable efforts to maintain source separation) is prohibited.⁴

We believe this change will establish a more practical standard with respect to agricultural and yard waste while continuing to prohibit the interstate movement of dedicated shipments or large quantities of such waste.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, with the change discussed in this document.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

We are amending the regulations pertaining to certain garbage to provide for the interstate movement of garbage from Hawaii subject to measures designed to protect against the dissemination of plant pests into noninfested areas of the continental United States. We are amending these regulations upon request in order to provide the State of Hawaii with additional waste disposal options, and after determining that the action will not result in the introduction of plant or animal pests or diseases into the continental United States from Hawaii.

For the purposes of this analysis, we have determined that the Island of Oahu (where Honolulu is located) is expected to be the source of most, if not all, of any MSW that is moved to

⁴ Based on the mean percent age of yard waste at the Waimanalo Gulch landfill, Oahu (6.0 percent " 3.4 percent) and on Hawaii (5.4 percent), if companies are only 50 percent effective with additional screening and removal of visible yard waste in transfer stations or on bale processing lines, the fraction of yard waste in baled Hawaiian MSW should be reduced to 3 percent or less.

the continental United States under the regulations. Oahu has only one municipal landfill (Waimanalo Gulch), and there is no alternative landfill on the island at the present time.

Oahu generates approximately 1.6 million tons of MSW per year. That figure is expected to rise an additional 20,000 tons and remain at that level for the next 10 years. Of the current total, 500,000 tons are recycled, 600,000 tons are burned for electricity, and 500,000 tons are landfilled. Of the 500,000 tons that are landfilled, 200,000 tons go to a privately operated construction and demolition landfill and 300,000 tons go to Waimanalo Gulch municipal landfill. Waimanalo Gulch landfill is owned by the City of Honolulu and managed by a private company.

The Island of Hawaii (where Hilo is located) is another potential source of MSW that would move to the continental United States if the proposal is adopted. The island's only two landfills are located approximately 75 miles apart, and one (South Hilo Sanitary Landfill) may be nearing capacity. To date, one waste management service company has proposed to bale and move at least some of the island's MSW to a landfill in Washington State. Approximately 200 tons of garbage per day is landfilled at the South Hilo facility.⁵

This rule will allow for the garbage to be compacted into bales, and then wrapped in plastic for transport to the mainland (the baling and wrapping would take place in the State of Hawaii). Estimates of the annual volume of MSW that would be shipped from Oahu to the continental United States range from 100,000 tons to 350,000 tons.⁶

Need for Rule and Alternatives Considered

5 [?] Source: News accounts in the Honolulu Star-Bulletin.

6 Source: News accounts in the Honolulu Star-Bulletin and APHIS staff. Similar estimates for the Island of Hawaii are not available.

These are being amended upon request to provide public officials in Hawaii another option for disposal of the State's waste. The only other regulatory alternative is to leave the regulations unchanged, but that alternative would unnecessarily limit Hawaiian officials' disposal options.

Small Entity Impact

The Regulatory Flexibility Act (RFA) requires that agencies consider the economic impact of rules on small entities, i.e., small businesses, organizations, and governmental jurisdictions. The changes to the regulations will allow for the movement of MSW from Hawaii to the continental United States.

These changes will not have a significant economic impact on a substantial number of small entities, because few entities, large or small, are likely to be affected. Only a handful of businesses are potentially affected by the rule -- e.g., the company or companies that would secure the contract to move the waste from Hawaii, the barge line or lines that would physically move the waste to the mainland, the trucking company/railroad on the mainland that would physically move the waste to the interior landfill locations, and perhaps a few companies on Hawaii that would be forced to discontinue participation (or play a reduced role) in the State's waste disposal process once shipments to the mainland began. Those businesses that will participate in the movement of the waste to the mainland could be expected to benefit, since they will generate additional revenue and, presumably, profits from the increased business activity. Conversely, those businesses that will either no longer participate or will play a reduced role in Hawaii's waste disposal process could be expected to suffer lost revenue.

The revenues generated by the private company that manages the Waimanalo Gulch landfill, for example, are presumably tied to the volume of waste that is landfilled there. If waste is diverted from Waimanalo Gulch to the mainland, that company's revenues are likely to be reduced. The City of Honolulu and the County of Hawaii are also potentially affected by the proposed changes.

The preceding discussion assumes that the rule will not have significant environmentally related economic consequences for small entities. There are several reasons. First, the environmental assessment in this document concludes that the movement of MSW from Hawaii to the continental United States (using the plastic-baled methodology) will not have a significant impact on the environment. Second, site-specific environmental assessments will also be prepared as requests for compliance agreements are made. The site-specific assessments, which will be made available for public comment, will allow APHIS to address any environmental issues that may arise based on precise destination and handling protocols for the proposed movements, which are now unknown.

Although the size of virtually all of the businesses potentially affected by the rule is unknown, it is reasonable to assume that at least some could be small. This assumption is based on composite data for providers of the same and similar services in the United States. As an example, North American Industry Classification System (NAICS) category 562 ("Waste Management and Remediation Services") consists of establishments engaged in the collection, treatment, and disposal of waste materials. Under the U.S. Small Business Administration's (SBA) size standards, the small entity threshold for establishments that fall into most of the activity subcategories under NAICS 562 is annual receipts of \$10.5 million. For all 18,405 U.S.

establishments in NAICS 562 in 2002, average per-establishment receipts that year were \$2.8 million, an indication that most waste management service companies are small entities.⁷

Annual receipt data for three of the four firms that have proposed to move Hawaii's waste to the mainland are not available. Although annual receipt data for the fourth company are also not available, that company is considered large by virtue of it being a subsidiary of a publicly owned firm with receipts (operating revenues) of over \$13 billion in 1999.⁸ The private company that currently manages the Waimanalo Gulch landfill is also a subsidiary of that publicly owned firm.

As another example, there were 677 U.S. entities in NAICS category 483113 in 2002. NAICS 483113 consists of entities primarily engaged in providing deep sea transportation of cargo to and from domestic ports. For all 677 entities, average per-entity employment that year was 36, well below the SBA's small entity threshold of 500 employees for entities in that NAICS category.⁹

Under the RFA, the term "small governmental jurisdiction" generally means cities, counties, townships, etc., with a population of less than 50,000. The City of Honolulu, which owns the Waimanalo Gulch landfill, does not qualify as a small entity because its population exceeds 50,000. The County of Hawaii, where Hilo is located, also has a population that exceeds 50,000.

The changes to the regulations will not, as noted previously, have a significant economic impact on a substantial number of small entities, because few entities, large or small, are likely to

7 [?] Source: U.S. Census Bureau (2002 Economic Census) and SBA.

8 [?] Source: Various Internet sites.

9 [?] Source: U.S. Census Bureau (2002 Economic Census) and SBA.

be affected. The size of virtually all of the businesses potentially affected by the changes to the regulations is unknown, but it is reasonable to assume that at least some could be small.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

National Environmental Policy Act

An environmental assessment and finding of no significant impact have been prepared for this final rule. The environmental assessment provides a basis for the conclusion that the importation of MSW from Hawaii to the mainland United States will not have a significant impact on the quality of the human environment. Based on the finding of no significant impact, the Administrator of the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

The environmental assessment and finding of no significant impact were prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 et seq.), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500-1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

The environmental assessment and finding of no significant impact may be viewed on the Regulations.gov Web site.¹⁰ Copies of the environmental assessment and finding of no significant impact are also available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect copies are requested to call ahead on (202) 690-2817 to facilitate entry into the reading room. In addition, copies may be obtained by writing to the individual listed under FOR FURTHER INFORMATION CONTACT.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), the information collection or recordkeeping requirements included in this rule have been approved by the Office of Management and Budget (OMB) under OMB control number 0579-[----] .

Government Paperwork Elimination Act Compliance

¹⁰Go to <http://www.regulations.gov>, click on the "Advanced Search" tab and select "Docket Search." In the Docket ID field, enter APHIS-2005-0047, click on "Submit," then click on the Docket ID link in the search results page. The environmental assessment and finding of no significant impact will appear in the resulting list of documents.

The Animal and Plant Health Inspection Service is committed to compliance with the Government Paperwork Elimination Act (GPEA), which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. For information pertinent to GPEA compliance related to this rule, please contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734-7477.

List of Subjects

7 CFR Part 330

Customs duties and inspection, Imports, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

Accordingly, we are amending 7 CFR part 330 and 9 CFR part 94 as follows:

TITLE 7--(AMENDED)

PART 330--FEDERAL PLANT PEST REGULATIONS; GENERAL; PLANT PESTS; SOIL, STONE, AND QUARRY PRODUCTS; GARBAGE

1. The authority citation for part 330 continues to read as follows:

Authority: 7 U.S.C. 450, 7701-7772, 7781-7786, and 8301-8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.3.

2. In § 330.100, a definition for State is added and the definition for United States is revised to read as follows:

§ 330.100 Definitions.

* * * * *

State. Any of the several States of the United States, the Commonwealth of the Northern Mariana Islands, the Commonwealth of Puerto Rico, the District of Columbia, Guam, the Virgin Islands of the United States, or any other territory or possession of the United States.

* * * * *

United States. All of the States.

* * * * *

3. Subpart–Garbage, § 330.400, is revised to read as follows:

Subpart–Garbage

Sec.

330.400 Regulation of certain garbage.

330.401 Garbage generated onboard a conveyance.

330.402 Garbage generated in Hawaii.

330.403 Compliance agreement and cancellation.

Subpart–Garbage

§ 330.400 Regulation of certain garbage.

(a) Certain interstate movements and imports.

(1) Interstate movements of garbage from Hawaii and U.S. territories and possessions to other States. Hawaii, Puerto Rico, American Samoa, the Commonwealth of the Northern Mariana Islands, the Federated States of Micronesia, Guam, the U.S. Virgin Islands, Republic of the Marshall Islands, and the Republic of Palau are hereby quarantined, and the movement of garbage therefrom to any other State is hereby prohibited except as provided in this subpart in order to prevent the introduction and spread of exotic plant pests and diseases.

(2) Imports of garbage. In order to protect against the introduction of exotic animal and plant pests and diseases, the importation of garbage from all foreign countries except Canada is prohibited except as provided in § 330.401(b).

(b) Definitions.

Agricultural waste. Byproducts generated by the rearing of animals and the production and harvest of crops or trees. Animal waste, a large component of agricultural waste, includes waste (e.g., feed waste, bedding and litter, and feedlot and paddock runoff) from livestock, dairy, and other animal-related agricultural and farming practices.

Approved facility. A facility approved by the Administrator, Animal and Plant Health Inspection Service, upon his determination that it has equipment and uses procedures that are adequate to prevent the dissemination of plant pests and livestock or poultry diseases, and that it is certified by an appropriate Government official as currently complying with the applicable laws for environmental protection.

Approved sewage system. A sewage system approved by the Administrator, Animal and Plant Health Inspection Service, upon his determination that the system is designed and operated

in such a way as to preclude the discharge of sewage effluents onto land surfaces or into lagoons or other stationary waters, and otherwise is adequate to prevent the dissemination of plant pests and livestock or poultry diseases, and that is certified by an appropriate Government official as currently complying with the applicable laws for environmental protection.

Carrier. The principal operator of a means of conveyance.

Garbage. All waste material that is derived in whole or in part from fruits, vegetables, meats, or other plant or animal (including poultry) material, and other refuse of any character whatsoever that has been associated with any such material.

Incineration. To reduce garbage to ash by burning.

Interstate. From one State into or through any other State.

Sterilization. Cooking garbage at an internal temperature of 212 EF for 30 minutes.

Stores. The food, supplies, and other provisions carried for the day-to-day operation of a conveyance and the care and feeding of its operators.

Yard waste. Solid waste composed predominantly of grass clippings, leaves, twigs, branches, and other garden refuse.

§ 330.401 Garbage generated onboard a conveyance.

(a) Applicability. This section applies to garbage generated onboard any means of conveyance during international or interstate movements as provided in this section and includes food scraps, table refuse, galley refuse, food wrappers or packaging materials, and other waste material from stores, food preparation areas, passengers' or crews' quarters, dining rooms, or any other areas on the means of conveyance. This section also applies to meals and other food that were available for consumption by passengers and crew on an aircraft but were not consumed.

(1) Not all garbage generated onboard a means of conveyance is regulated for the purposes of this section. Garbage regulated for the purposes of this section is defined as “regulated garbage” in paragraphs (b) and (c) of this section.

(2) Garbage that is commingled with regulated garbage is also regulated garbage.

(b) Garbage regulated because of movements outside the United States or Canada. For purposes of this section, garbage on or removed from a means of conveyance is regulated garbage, if, when the garbage is on or removed from the means of conveyance, the means of conveyance has been in any port outside the United States and Canada within the previous 2-year period. There are, however, two exceptions to this provision. These exceptions are as follows:

(1) Exception 1: Aircraft. Garbage on or removed from an aircraft is exempt from requirements under paragraph (d) of this section if the following conditions are met when the garbage is on or removed from the aircraft:

(i) The aircraft had previously been cleared of all garbage and of all meats and meat products, whatever the country of origin, except meats that are shelf-stable; all fresh and condensed milk and cream from countries designated in 9 CFR 94.1 as those in which foot-and-mouth disease exists; all fresh fruits and vegetables; and all eggs; and the items previously cleared from the aircraft as prescribed by this paragraph have been disposed of according to the procedures for disposing of regulated garbage, as specified in paragraphs (d)(2) and (d)(3) of this section.

(ii) After the garbage and stores referred to in paragraph (b)(1)(i) of this section were removed, the aircraft has not been in a non-Canadian foreign port.

(2) Exception 2: Other conveyances. Garbage on or removed in the United States from a means of conveyance other than an aircraft is exempt from requirements under paragraph (d) of this section if the following conditions are met when the garbage is on or removed from the means of conveyance:

(i) The means of conveyance is accompanied by a certificate from an inspector stating the following:

(A) That the means of conveyance had previously been cleared of all garbage and of all meats and meat products, whatever the country of origin, except meats that are shelf-stable; all fresh and condensed milk and cream from countries designated in 9 CFR 94.1 as those in which foot-and-mouth disease exists; all fresh fruits and vegetables; and all eggs; and the items previously cleared from the means of conveyance as prescribed by this paragraph have been disposed of according to the procedures for disposing of regulated garbage, as specified in paragraphs (d)(2) and (d)(3) of this section.

(B) That the means of conveyance had then been cleaned and disinfected in the presence of the inspector; and

(ii) Since being cleaned and disinfected, the means of conveyance has not been in a non-Canadian foreign port.

(c) Garbage regulated because of certain movements to or from Hawaii, territories, or possessions. For purposes of this section, garbage on or removed from a means of conveyance is regulated garbage, if at the time the garbage is on or removed from the means of conveyance, the means of conveyance has moved during the previous 1-year period, either directly or indirectly, to the continental United States from any territory or possession or from Hawaii, to any territory

or possession from any other territory or possession or from Hawaii, or to Hawaii from any territory or possession. There are, however, two exceptions to this provision. These exceptions are as follows:

(1) Exception 1: Aircraft. Garbage on or removed from an aircraft is exempt from requirements under paragraph (d) of this section if the following two conditions are met when the garbage is on or removed from the aircraft:

(i) The aircraft had been previously cleared of all garbage and all fresh fruits and vegetables, and the items previously cleared from the aircraft as prescribed by this paragraph have been disposed of according to the procedures for disposing of regulated garbage, as specified in paragraphs (d)(2) and (d)(3) of this section.

(ii) After the garbage and stores referred to in paragraph (c)(1)(i) of this section were removed, the aircraft has not moved to the continental United States from any territory or possession or from Hawaii; to any territory or possession from any other territory or possession or from Hawaii; or to Hawaii from any territory or possession.

(2) Exception 2: Other conveyances. Garbage on or removed from a means of conveyance other than an aircraft is exempt from requirements under paragraph (d) of this section if the following two conditions are met when the garbage is on or removed from the means of conveyance:

(i) The means of conveyance is accompanied by a certificate from an inspector stating that the means of conveyance had been cleared of all garbage and all fresh fruits and vegetables; and the items previously cleared from the means of conveyance as prescribed by this paragraph

have been disposed of according to the procedures for disposing of regulated garbage, as specified in paragraphs (d)(2) and (d)(3) of this section.

(ii) After being cleared of the garbage and stores referred to in paragraph (c)(2)(i) of this section, the means of conveyance has not moved to the continental United States from any territory or possession or from Hawaii; to any territory or possession from any other territory or possession or from Hawaii; or to Hawaii from any territory or possession.

(d) Restrictions on regulated garbage.

(1) Regulated garbage may not be disposed of, placed on, or removed from a means of conveyance except in accordance with this section.

(2) Regulated garbage is subject to general surveillance for compliance with this section by inspectors and to disposal measures authorized by the Plant Protection Act and the Animal Health Protection Act to prevent the introduction and dissemination of pests and diseases of plants and livestock.

(3) All regulated garbage must be contained in tight, covered, leak-proof receptacles during storage on board a means of conveyance while in the territorial waters, or while otherwise within the territory of the United States. All such receptacles shall be contained inside the guard rail if on a watercraft. Such regulated garbage shall not be unloaded from such means of conveyance in the United States unless such regulated garbage is removed in tight, covered, leak-proof receptacles under the direction of an inspector to an approved facility for incineration, sterilization, or grinding into an approved sewage system, under direct supervision by such an inspector, or such regulated garbage is removed for other handling in such manner and under such supervision as may, upon request in specific cases, be approved by the Administrator as

adequate to prevent the introduction and dissemination of plant pests and animal diseases and sufficient to ensure compliance with applicable laws for environmental protection. Provided that, a cruise ship may dispose of regulated garbage in landfills at Alaskan ports only, if and only if the cruise ship does not have prohibited or restricted meat or animal products on board at the time it enters Alaskan waters for the cruise season, and only if the cruise ship, except for incidental travel through international waters necessary to navigate safely between ports, remains in Canadian and U.S. waters off the west coast of North America, and calls only at continental U.S. and Canadian ports during the entire cruise season.

(i) Application for approval of a facility or sewage system may be made in writing by the authorized representative of any carrier or by the official having jurisdiction over the port or place of arrival of the means of conveyance to the Administrator, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Washington, DC 20250. The application must be endorsed by the operator of the facility or sewage system.

(ii) Approval will be granted if the Administrator determines that the requirements set forth in this section are met. Approval may be denied or withdrawn at any time, if the Administrator determines that such requirements are not met, after notice of the proposed denial or withdrawal of the approval and the reasons therefor, and an opportunity to demonstrate or achieve compliance with such requirements, has been afforded to the operator of the facility or sewage system and to the applicant for approval. However, approval may also be withdrawn without such prior procedure in any case in which the public health, interest, or safety requires immediate action, and in such case, the operator of the facility or sewage system and the

applicant for approval shall promptly thereafter be given notice of the withdrawal and the reasons therefor and an opportunity to show cause why the approval should be reinstated.

(e) The Plant Protection and Quarantine Programs and Veterinary Services, Animal, and Plant Health Inspection Service, will cooperate with other Federal, State, and local agencies responsible for enforcing other statutes and regulations governing disposal of the regulated garbage to the end that such disposal shall be adequate to prevent the dissemination of plant pests and livestock or poultry diseases and comply with applicable laws for environmental protection. The inspectors, in maintaining surveillance over regulated garbage movements and disposal, shall coordinate their activities with the activities of representatives of the Environmental Protection Agency and other Federal, State, and local agencies also having jurisdiction over such regulated garbage

§ 330.402 Garbage generated in Hawaii.

(a) Applicability. This section applies to garbage generated in households, commercial establishments, institutions, and businesses prior to interstate movement from Hawaii, and includes used paper, discarded cans and bottles, and food scraps. Such garbage includes, and is commonly known as, municipal solid waste.

(1) Industrial process wastes, mining wastes, sewage sludge, incinerator ash, or other wastes from Hawaii that the Administrator determines do not pose risks of introducing animal or plant pests or diseases into the continental United States are not regulated under this section.

(2) The interstate movement from Hawaii to the continental United States of agricultural wastes and yard waste (other than incidental amounts (less than 3 percent) that may be present in municipal solid waste despite reasonable efforts to maintain source separation) is prohibited.

(3) Garbage generated onboard any means of conveyance during interstate movement from Hawaii is regulated under § 330.401.

(b) Restrictions on interstate movement of garbage. The interstate movement of garbage generated in Hawaii to the continental United States is regulated as provided in this section.

(1) The garbage must be processed, packaged, safeguarded, and disposed of using a methodology that the Administrator has determined is adequate to prevent the introduction or dissemination of plant pests into noninfested areas of the United States.

(2) The garbage must be moved under a compliance agreement in accordance with § 330.403. APHIS will only enter into a compliance agreement when the Administrator is satisfied that the Agency has first satisfied all its obligations under the National Environmental Policy Act and all applicable Federal and State statutes to fully assess the impacts associated with the movement of garbage under the compliance agreement.

(3) All such garbage moved interstate from Hawaii to any of the continental United States must be moved in compliance with all applicable laws for environmental protection.

§ 330.403 Compliance agreement and cancellation.

(a) Any person engaged in the business of handling or disposing of garbage in accordance with this subpart must first enter into a compliance agreement with the Animal and Plant Health Inspection Service (APHIS). Compliance agreement forms (PPQ Form 519) are available without charge from local USDA/APHIS/Plant Protection and Quarantine offices, which are listed in telephone directories.

(b) A person who enters into a compliance agreement, and employees or agents of that person, must comply with the following conditions and any supplemental conditions which are listed in the compliance agreement, as deemed by the Administrator to be necessary to prevent the dissemination into or within the United States of plant pests and livestock or poultry diseases:

(1) Comply with all applicable provisions of this subpart;

(2) Allow inspectors access to all records maintained by the person regarding handling or disposal of garbage, and to all areas where handling or disposal of garbage occurs;

(3)(i) If the garbage is regulated under § 330.401, remove garbage from a means of conveyance only in tight, covered, leak-proof receptacles;

(ii) If the garbage is regulated under § 330.402, transport garbage interstate in packaging approved by the Administrator;

(4) Move the garbage only to a facility approved by the Administrator; and

(5) At the approved facility, dispose of the garbage in a manner approved by the Administrator and described in the compliance agreement.

(c) Approval for a compliance agreement may be denied at any time if the Administrator determines that the applicant has not met or is unable to meet the requirements set forth in this subpart. Prior to denying any application for a compliance agreement, APHIS will provide

notice to the applicant thereof, and will provide the applicant with an opportunity to demonstrate or achieve compliance with requirements.

(d) Any compliance agreement may be canceled, either orally or in writing, by an inspector whenever the inspector finds that the person who has entered into the compliance agreement has failed to comply with this subpart. If the cancellation is oral, the cancellation and the reasons for the cancellation will be confirmed in writing as promptly as circumstances allow. Any person whose compliance agreement has been canceled may appeal the decision, in writing, within 10 days after receiving written notification of the cancellation. The appeal must state all of the facts and reasons upon which the person relies to show that the compliance agreement was wrongfully canceled. As promptly as circumstances allow, the Administrator will grant or deny the appeal, in writing, stating the reasons for the decision. A hearing will be held to resolve any conflict as to any material fact. Rules of practice concerning a hearing will be adopted by the Administrator. This administrative remedy must be exhausted before a person can file suit in court challenging the cancellation of a compliance agreement.

(e) Where a compliance agreement is denied or canceled, the person who entered into or applied for the compliance agreement may be prohibited, at the discretion of the Administrator, from handling or disposing of regulated garbage.

(Approved by the Office of Management and Budget under control number 0579-0015 and 0579-0054)

TITLE 9—(AMENDED)

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE),
EXOTIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, CLASSICAL SWINE
FEVER, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND
RESTRICTED IMPORTATIONS

4. The authority citation for part 94 continues to read as follows:

Authority: 7 U.S.C. 450, 7701-7772, 7781-7786, and 8301-8317; 21 U.S.C. 136 and
136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

5. In § 94.0, a definition for State is added and the definition for United States is revised
to read as follows:

§ 94.0 Definitions.

* * * * *

State. Any of the several States of the United States, the Commonwealth of the Northern
Mariana Islands, the Commonwealth of Puerto Rico, the District of Columbia, Guam, the Virgin
Islands of the United States, or any other territory or possession of the United States.

* * * * *

United States. All of the States.

* * * * *

6. Section 94.5 is revised to read as follows:

§ 94.5 Regulation of certain garbage.

(a) General restrictions.

(1) Interstate movements of garbage from Hawaii and U.S. territories and possessions to the continental United States. Hawaii, Puerto Rico, American Samoa, the Commonwealth of the Northern Mariana Islands, the Federated States of Micronesia, Guam, the U.S. Virgin Islands, Republic of the Marshall Islands, and the Republic of Palau are hereby quarantined, and the movement of garbage therefrom to any other State is hereby prohibited except as provided in this section in order to prevent the introduction and spread of exotic plant pests and diseases.

(2) Imports of garbage. In order to protect against the introduction of exotic animal and plant pests, the importation of garbage from all foreign countries except Canada is prohibited except as provided in paragraph (c)(2) of this section.

(b) Definitions.

Agricultural waste. Byproducts generated by the rearing of animals and the production and harvest of crops or trees. Animal waste, a large component of agricultural waste, includes waste (e.g., feed waste, bedding and litter, and feedlot and paddock runoff) from livestock, dairy, and other animal-related agricultural and farming practices.

Approved facility. A facility approved by the Administrator, Animal and Plant Health Inspection Service, upon his determination that it has equipment and uses procedures that are adequate to prevent the dissemination of plant pests and livestock or poultry diseases, and that it is certified by an appropriate Government official as currently complying with the applicable laws for environmental protection.

Approved sewage system. A sewage system approved by the Administrator, Animal and Plant Health Inspection Service, upon his determination that the system is designed and operated in such a way as to preclude the discharge of sewage effluents onto land surfaces or into lagoons

or other stationary waters, and otherwise is adequate to prevent the dissemination of plant pests and livestock or poultry diseases, and that is certified by an appropriate Government official as currently complying with the applicable laws for environmental protection.

Carrier. The principal operator of a means of conveyance.

Continental United States. The 49 States located on the continent of North America and the District of Columbia.

Garbage. All waste material that is derived in whole or in part from fruits, vegetables, meats, or other plant or animal (including poultry) material, and other refuse of any character whatsoever that has been associated with any such material.

Incineration. To reduce garbage to ash by burning.

Inspector. A properly identified employee of the U.S. Department of Agriculture or other person authorized by the Department to enforce the provisions of applicable statutes, quarantines, and regulations.

Interstate. From one State into or through any other State.

Person. Any individual, corporation, company, association, firm, partnership, society, or joint stock company.

Shelf-stable. The condition achieved in a product, by application of heat, alone or in combination with other ingredients and/or other treatments, of being rendered free of microorganisms capable of growing in the product under nonrefrigerated conditions (over 50 EF or 10 EC).

Sterilization. Cooking garbage at an internal temperature of 212 EF for 30 minutes.

Stores. The food, supplies, and other provisions carried for the day-to-day operation of a conveyance and the care and feeding of its operators.

Yard waste. Solid waste composed predominantly of grass clippings, leaves, twigs, branches, and other garden refuse.

(c) Garbage generated onboard a conveyance.

(1) Applicability. This section applies to garbage generated onboard any means of conveyance during international or interstate movements as provided in this section and includes food scraps, table refuse, galley refuse, food wrappers or packaging materials, and other waste material from stores, food preparation areas, passengers' or crews' quarters, dining rooms, or any other areas on the means of conveyance. This section also applies to meals and other food that were available for consumption by passengers and crew on an aircraft but were not consumed.

(i) Not all garbage generated onboard a means of conveyance is regulated for the purposes of this section. Garbage regulated for the purposes of this section is defined as “regulated garbage” in paragraphs (c)(2) and (c)(3) of this section.

(ii) Garbage that is commingled with regulated garbage is also regulated garbage.

(2) Garbage regulated because of movements outside the United States or Canada. For purposes of this section, garbage on or removed from a means of conveyance is regulated garbage, if, when the garbage is on or removed from the means of conveyance, the means of conveyance has been in any port outside the United States and Canada within the previous 2-year period. There are, however, two exceptions to this provision. These exceptions are as follows:

(i) Exception 1: Aircraft. Garbage on or removed from an aircraft is exempt from requirements under paragraph (c)(4) of this section if the following conditions are met when the garbage is on or removed from the aircraft:

(A) The aircraft had previously been cleared of all garbage and of all meats and meat products, whatever the country of origin, except meats that are shelf-stable; all fresh and condensed milk and cream from countries designated in § 94.1 as those in which foot-and-mouth disease exists; all fresh fruits and vegetables; and all eggs; and the items previously cleared from the aircraft as prescribed by this paragraph have been disposed of according to the procedures for disposing of regulated garbage, as specified in paragraphs (c)(4)(ii) and (c)(4)(iii) of this section.

(B) After the garbage and stores referred to in paragraph (c)(2)(i)(A) of this section were removed, the aircraft has not been in a non-Canadian foreign port.

(ii) Exception 2: Other conveyances. Garbage on or removed in the United States from a means of conveyance other than an aircraft is exempt from requirements under paragraph (c)(4) of this section if the following conditions are met when the garbage is on or removed from the means of conveyance:

(A) The means of conveyance is accompanied by a certificate from an inspector stating the following:

(1) That the means of conveyance had previously been cleared of all garbage and of all meats and meat products, whatever the country of origin, except meats that are shelf-stable; all fresh and condensed milk and cream from countries designated in § 94.1 as those in which foot-and-mouth disease exists; all fresh fruits and vegetables; and all eggs; and the items previously cleared from the means of conveyance as prescribed by this paragraph have been disposed of

according to the procedures for disposing of regulated garbage, as specified in paragraphs (c)(4)(ii) and (c)(4)(iii) of this section.

(2) That the means of conveyance had then been cleaned and disinfected in the presence of the inspector; and

(B) Since being cleaned and disinfected, the means of conveyance has not been in a non-Canadian foreign port.

(3) Garbage regulated because of certain movements to or from Hawaii, territories, or possessions. For purposes of this section, garbage on or removed from a means of conveyance is regulated garbage, if at the time the garbage is on or removed from the means of conveyance, the means of conveyance has moved during the previous 1-year period, either directly or indirectly, to the continental United States from any territory or possession or from Hawaii, to any territory or possession from any other territory or possession or from Hawaii, or to Hawaii from any territory or possession. There are, however, two exceptions to this provision. These exceptions are as follows:

(i) Exception 1: Aircraft. Garbage on or removed from an aircraft is exempt from requirements under paragraph (c)(4) of this section if the following two conditions are met when the garbage is on or removed from the aircraft:

(A) The aircraft had been previously cleared of all garbage and all fresh fruits and vegetables, and the items previously cleared from the aircraft as prescribed by this paragraph have been disposed of according to the procedures for disposing of regulated garbage, as specified in paragraphs (c)(4)(ii) and (c)(4)(iii) of this section.

(B) After the garbage and stores referred to in paragraph (c)(3)(i)(A) of this section were removed, the aircraft has not moved to the continental United States from any territory or possession or from Hawaii, to any territory or possession from any other territory or possession or from Hawaii, or to Hawaii from any territory or possession.

(ii) Exception 2: Other conveyances. Garbage on or removed from a means of conveyance other than an aircraft is exempt from requirements under paragraph (c)(4) of this section if the following two conditions are met when the garbage is on or removed from the means of conveyance:

(A) The means of conveyance is accompanied by a certificate from an inspector stating that the means of conveyance had been cleared of all garbage and all fresh fruits and vegetables, and the items previously cleared from the means of conveyance as prescribed by this paragraph have been disposed of according to the procedures for disposing of regulated garbage, as specified in paragraphs (c)(4)(ii) and (c)(4)(iii) of this section.

(B) After being cleared of the garbage and stores referred to in paragraph (c)(3)(ii)(A) of this section, the means of conveyance has not moved to the continental United States from any territory or possession or from Hawaii; to any territory or possession from any other territory or possession or from Hawaii; or to Hawaii from any territory or possession.

(4) Restrictions on regulated garbage.

(i) Regulated garbage may not be disposed of, placed on, or removed from a means of conveyance except in accordance with this section.

(ii) Regulated garbage is subject to general surveillance for compliance with this section by inspectors and to disposal measures authorized by the Plant Protection Act and the Animal

Health Protection Act to prevent the introduction and dissemination of pests and diseases of plants and livestock.

(iii) All regulated garbage must be contained in tight, covered, leak-proof receptacles during storage on board a means of conveyance while in the territorial waters, or while otherwise within the territory of the United States. All such receptacles shall be contained inside the guard rail if on a watercraft. Such regulated garbage shall not be unloaded from such means of conveyance in the United States unless such regulated garbage is removed in tight, covered, leak-proof receptacles under the direction of an inspector to an approved facility for incineration, sterilization, or grinding into an approved sewage system, under direct supervision by such an inspector, or such regulated garbage is removed for other handling in such manner and under such supervision as may, upon request in specific cases, be approved by the Administrator as adequate to prevent the introduction and dissemination of plant pests and animal diseases and sufficient to ensure compliance with applicable laws for environmental protection. Provided that, a cruise ship may dispose of regulated garbage in landfills at Alaskan ports only, if and only if the cruise ship does not have prohibited or restricted meat or animal products on board at the time it enters Alaskan waters for the cruise season, and only if the cruise ship, except for incidental travel through international waters necessary to navigate safely between ports, remains in Canadian and U.S. waters off the west coast of North America, and calls only at continental U.S. and Canadian ports during the entire cruise season.

(A) Application for approval of a facility or sewage system may be made in writing by the authorized representative of any carrier or by the official having jurisdiction over the port or place of arrival of the means of conveyance to the Administrator, Animal and Plant Health

Inspection Service, U.S. Department of Agriculture, Washington, DC 20250. The application must be endorsed by the operator of the facility or sewage system.

(B) Approval will be granted if the Administrator determines that the requirements set forth in this section are met. Approval may be denied or withdrawn at any time, if the Administrator determines that such requirements are not met, after notice of the proposed denial or withdrawal of the approval and the reasons therefor, and an opportunity to demonstrate or achieve compliance with such requirements, has been afforded to the operator of the facility or sewage system and to the applicant for approval. However, approval may also be withdrawn without such prior procedure in any case in which the public health, interest, or safety requires immediate action, and in such case, the operator of the facility or sewage system and the applicant for approval shall promptly thereafter be given notice of the withdrawal and the reasons therefore and an opportunity to show cause why the approval should be reinstated.

(iv) The Plant Protection and Quarantine Programs and Veterinary Services, Animal, and Plant Health Inspection Service, will cooperate with other Federal, State, and local agencies responsible for enforcing other statutes and regulations governing disposal of the regulated garbage to the end that such disposal shall be adequate to prevent the dissemination of plant pests and livestock or poultry diseases and comply with applicable laws for environmental protection. The inspectors, in maintaining surveillance over regulated garbage movements and disposal, shall coordinate their activities with the activities of representatives of the U.S. Environmental Protection Agency and other Federal, State, and local agencies also having jurisdiction over such regulated garbage.

(d) Garbage generated in Hawaii.

(1) Applicability. This section applies to garbage generated in households, commercial establishments, institutions, and businesses prior to interstate movement from Hawaii, and includes used paper, discarded cans and bottles, and food scraps. Such garbage includes, and is commonly known as, municipal solid waste.

(i) Industrial process wastes, mining wastes, sewage sludge, incinerator ash, or other wastes from Hawaii that the Administrator determines do not pose risks of introducing animal or plant pests or diseases into the continental United States are not regulated under this section.

(ii) The interstate movement from Hawaii to the continental United States of agricultural wastes and yard waste (other than incidental amounts (less than 3 percent) that may be present in municipal solid waste despite reasonable efforts to maintain source separation) is prohibited.

(iii) Garbage generated onboard any means of conveyance during interstate movement from Hawaii is regulated under paragraph (c) of this section.

(2) Restrictions on interstate movement of garbage. The interstate movement of garbage generated in Hawaii to the continental United States is regulated as provided in this section.

(i) The garbage must be processed, packaged, safeguarded, and disposed of using a methodology that the Administrator has determined is adequate to prevent the introduction and dissemination of plant pests into noninfested areas of the United States.

(ii) The garbage must be moved under a compliance agreement in accordance with paragraph (e) of this section. APHIS will only enter into a compliance agreement when the Administrator is satisfied that the Agency has first satisfied all its obligations under the National Environmental Policy Act and all applicable Federal and State statutes to fully assess the impacts associated with the movement of garbage under the compliance agreement.

(iii) All such garbage moved interstate from Hawaii to any of the continental United States must be moved in compliance with all applicable laws for environmental protection.

(e) Compliance agreement and cancellation.

(1) Any person engaged in the business of handling or disposing of garbage in accordance with this section must first enter into a compliance agreement with the Animal and Plant Health Inspection Service (APHIS). Compliance agreement forms (PPQ Form 519) are available without charge from local USDA/APHIS/Plant Protection and Quarantine offices, which are listed in telephone directories.

(2) A person who enters into a compliance agreement, and employees or agents of that person, must comply with the following conditions and any supplemental conditions which are listed in the compliance agreement, as deemed by the Administrator to be necessary to prevent the introduction and dissemination into or within the United States of plant pests and livestock or poultry diseases:

(i) Comply with all applicable provisions of this section;

(ii) Allow inspectors access to all records maintained by the person regarding handling or disposal of garbage, and to all areas where handling or disposal of garbage occurs;

(iii)(A) If the garbage is regulated under paragraph (c) of this section, remove garbage from a means of conveyance only in tight, covered, leak-proof receptacles;

(B) If the garbage is regulated under paragraph (d) of this section, transport garbage interstate in sealed, leak-proof packaging approved by the Administrator;

(iv) Move the garbage only to a facility approved by the Administrator; and

(v) At the approved facility, dispose of the garbage in a manner approved by the Administrator and described in the compliance agreement.

(3) Approval for a compliance agreement may be denied at any time if the Administrator determines that the applicant has not met or is unable to meet the requirements set forth in this section. Prior to denying any application for a compliance agreement, APHIS will provide notice to the applicant thereof, and will provide the applicant with an opportunity to demonstrate or achieve compliance with requirements.

(4) Any compliance agreement may be canceled, either orally or in writing, by an inspector whenever the inspector finds that the person who has entered into the compliance agreement has failed to comply with this section. If the cancellation is oral, the cancellation and the reasons for the cancellation will be confirmed in writing as promptly as circumstances allow. Any person whose compliance agreement has been canceled may appeal the decision, in writing, within 10 days after receiving written notification of the cancellation. The appeal must state all of the facts and reasons upon which the person relies to show that the compliance agreement was wrongfully canceled. As promptly as circumstances allow, the Administrator will grant or deny the appeal, in writing, stating the reasons for the decision. A hearing will be held to resolve any conflict as to any material fact. Rules of practice concerning a hearing will be adopted by the Administrator. This administrative remedy must be exhausted before a person can file suit in court challenging the cancellation of a compliance agreement.

(5) Where a compliance agreement is denied or canceled, the person who entered into or applied for the compliance agreement may be prohibited, at the discretion of the Administrator, from handling or disposing of regulated garbage.

(Approved by the Office of Management and Budget under control numbers 0579-0015 and 0579-0054)

Done in Washington, DC, this _____ day of _____ .

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Administrator, Animal and Plant Health Inspection Service.

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OGC changes incorporated, LPL, 8/4/06